

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI

BAKER STERCHI COWDEN & RICE, L.L.C.,	)	
a Missouri limited liability company,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:09-CV-01100
	)	
BRAUN RACING, LLC,	)	
an Indiana limited liability company,	)	
Registered Agent:	)	
William P. Bray	)	
The Bray Law Firm, PLLC	)	
4701 Hedgemore Drive, Suite 816	)	
Charlotte, North Carolina 28209	)	
	)	
Defendant.	)	

**COMPLAINT**

Plaintiff Baker Sterchi Cowden & Rice, L.L.C. ("BSCR"), by and through its attorneys of record, James R. Jarrow and Eric C. Sexton, and for its causes of action against Defendant Braun Racing, LLC ("Braun Racing"), states and alleges as follows:

**I. PARTIES**

1. Plaintiff Baker Sterchi Cowden & Rice, L.L.C. is a limited liability company organized and existing under the laws of the State of Missouri, with its principal place of business in Kansas City, Missouri.

2. Upon information and belief, Defendant Braun Racing, LLC ("Braun Racing") is an Indiana limited liability company, with its principal office located at 163 Rolling Hill Road, Mooresville, North Carolina 28117.

3. Upon information and belief, the President or Manager of Braun Racing is Todd William Braun ("Braun").

4. Braun Racing is not registered to do business in the State of Missouri.
5. Braun Racing's registered agent in the State of North Carolina is William P. Bray, The Bray Law Firm, PLLC, 4701 Hedgemore Drive, Suite 816, Charlotte, North Carolina 28209.

## II. FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

6. In approximately October 2007, Plaintiff BSCR was contacted by William P. Bray ("Bray").
7. Bray represented to BSCR that he was an attorney with the law firm of The Bray Law Firm, PLLC, a Charlotte, North Carolina law firm.
8. Bray represented that he was outside counsel for Braun Racing.
9. Bray represented he and his firm represented Braun Racing with regard to certain issues relating to the threatened non-judicial foreclosure of a deed of trust concerning certain property in Platte County, Missouri.
10. Bray represented he was assisting Braun Racing in the selection of local Missouri counsel to represent Braun Racing with regard to those matters.
11. Bray was an agent of Braun Racing in his dealings with BSCR.
12. Bray acted with apparent authority on behalf of Braun racing in his dealings with BSCR.
13. In late October, 2007, after further discussion with BSCR attorneys, Braun Racing (through Bray) requested that BSCR represent Braun Racing with regard to the issues relating to the property in Platte County, Missouri.
14. In October 2007, BSCR accepted Braun Racing's offer to retain BSCR.

15. BSCR began representing Braun Racing concerning the issues relating to the property in Platte County, Missouri.

16. BSCR entered appearances and represented Braun Racing in the following lawsuits (hereinafter collectively referred to as the "Litigation"):

(a) *The Oil Spot, LLC v. Braun Racing, LLC*, Case No. 07AE-CV03454, In the Circuit Court of Platte County, Missouri at Platte City;

(b) *Braun Racing, LLC v. SMF Registered Services, Inc., Michele O'Malley, The Oil Spot KC, LLC, Bank of Blue Valley & Frontier Leasing Corp.*, Case No. 07AE-CV04126, In the Circuit Court of Platte County, Missouri at Platte City;

(c) *Braun Racing, LLC v. SMF Registered Services, Inc., Michele O'Malley, The Oil Spot KC, LLC, Bank of Blue Valley & Frontier Leasing Corp.*, Case No. 07AE-CV04126-01, In the Circuit Court of Platte County, Missouri at Platte City;

(d) *In re The Oil Spot KC, LLC*, Case No. 08-50939-JWV11 (Chapter 11), In the United States Bankruptcy Court, Western District of Missouri; and

(e) *Braun Racing, LLC v. SMF Registered Services, Inc., et al*, Adversary Case No. 09-04078-JWV, In the United States Bankruptcy Court, Western District of Missouri.

17. From October 2007, until July 2009, BSCR represented Braun Racing with regard to the issues relating to the property in Platte County, Missouri.

18. During the course of the Litigation, BSCR, at the direction of Braun Racing, protected Braun Racing's interest in the subject property, filed a lawsuit and prosecuted the claims, including successfully defending multiple motions to dismiss.

19. Throughout the course of its representation of Braun Racing, BSCR kept certain officers and key employees of Braun Racing, including, but not limited to, Braun and/or Bray, Braun Racing's agent and authorized representative, informed of events relating to the Litigation concerning the property in Platte County, Missouri.

20. Braun and Bray, Braun Racing's agent and authorized representative, monitored, managed, and/or directed BSCR's activities in connection with the Litigation concerning the property in Platte County, Missouri.

21. During the course of representing Braun in connection with the Litigation, BSCR rendered legal services.

22. The legal services provided by BSCR to Braun Racing had value.

23. The legal services provided by BSCR to Braun Racing had value.

24. BSCR incurred expenses on behalf of Braun Racing.

25. BSCR billed Braun Racing for attorneys' fees in the amount of \$181,428.00 and

26. BSCR incurred additional costs and expenses in connection with its representation and/or for the benefit of Braun Racing in the amount of \$8,891.56.

27. BSCR provided Braun and Bray, Braun Racing's agent and authorized representative, with itemized monthly invoices or statements for the legal services, costs and expenses incurred in connection with BSCR's representation of Braun Racing in the Litigation.

28. All of the legal services and attorneys' fees, costs and expenses rendered or incurred by BSCR in representing Braun Racing in connection with the Litigation were reasonable and necessary.

29. Throughout the course of its representation of Braun Racing, neither Braun nor Bray, Braun Racing's agent and authorized representative, ever informed BSCR of any complaint, concern, or negative comment, including, but not limited to, any claims of excessive, improper, unnecessary, or ineffective services or expenses, with regard to the legal services provided by BSCR to Braun Racing during the Litigation.

30. As a result of fee disputes, Braun retained new counsel and BSCR withdrew from its representation.

31. BSCR has attempted on multiple occasions to discuss with Braun Racing the payment of the outstanding fees and expenses consisting of \$181,428.00 in fees and \$8,891.56 in expenses for a total of \$190,319.56, but Braun Racing has refused to communicate with BSCR.

32. To date, despite repeated demands by BSCR, Braun Racing has failed to pay any of the \$190,319.56 due to BSCR.

### **III. JURISDICTION AND VENUE**

33. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, inasmuch as the parties hereto are citizens of different states and the amount at issue exceeds the sum of \$75,000, exclusive of interest and costs.

34. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the claims set forth herein occurred in this judicial district.

#### **IV. COUNT I – BREACH OF CONTRACT**

35. Plaintiff BSCR adopts and realleges the allegations of Paragraphs 1-34 of its Complaint, and incorporates the same by reference as though fully set forth herein.

36. An oral contract existed between BSCR and Braun Racing, for BSCR to represent Braun Racing.

37. Sufficient consideration supported the contract.

38. BSCR performed its obligations according to the contract.

39. Braun Racing breached the contract by failing to pay BSCR for services rendered and related costs and expenses in connection with the Litigation.

40. As a direct and proximate result of Braun Racing's breach of contract, BSCR has been damaged in the amount of \$190,319.56.

WHEREFORE, Plaintiff Baker Sterchi Cowden & Rice, L.L.C. demand judgment in its favor and against Defendant Braun Racing, LLC on Count I of its Complaint, and prays for damages against Defendant Braun Racing, LLC in the amount of \$190,319.56 together with interest and its attorneys' fees, costs and expenses as allowed by law, and for such other and further relief as this Court deems just and proper.

#### **V. COUNT II – PROMISSORY ESTOPPEL**

41. Plaintiff BSCR adopts and realleges the allegations of Paragraphs 1-40 of its Complaint, and incorporates the same by reference as though fully set forth herein.

42. Braun Racing made a promise to compensate BSCR for its services, which Braun Racing should have reasonably expected to induce action or forbearance of a definite and substantial character on the part of BSCR, *i.e.*, BSCR's actions in representing Braun Racing in the Litigation.

43. Such promises did in fact induce such action or forbearance on the part of BSCR.

44. Injustice can be avoided only by enforcement of Braun Racing's promise to BSCR.

WHEREFORE, Plaintiff Baker Sterchi Cowden & Rice, L.L.C. demand judgment in its favor and against Defendant Braun Racing, LLC on Count II of its Complaint, and prays for damages against Defendant Braun Racing, LLC in the amount of \$190,319.56 together with interest and its attorneys' fees, costs and expenses as allowed by law, and for such other and further relief as this Court deems just and proper.

#### **VI. COUNT III – QUANTUM MERUIT**

45. Plaintiff BSCR adopts and realleges the allegations of Paragraphs 1-44 of its Complaint, and incorporates the same by reference as though fully set forth herein.

46. BSCR's representation of Braun Racing in connection with the Litigation conferred a substantial benefit on Braun Racing.

47. Braun Racing appreciated and/or had knowledge of the benefit conferred by BSCR.

48. Braun Racing accepted and/or retained the benefit conferred by BSCR.

49. Under the foregoing circumstances, Braun Racing's acceptance and/or retention of such benefit is not equitable without payment for its value.

50. The reasonable value of BSCR's legal services and expenses on behalf and for the benefit of Braun Racing is \$190,319.56.

WHEREFORE, Plaintiff Baker Sterchi Cowden & Rice, L.L.C. demand judgment in its favor and against Defendant Braun Racing, LLC on Count II of its Complaint, and

prays for damages against Defendant Braun Racing, LLC in the amount of \$190,319.56 together with interest and its attorneys' fees, costs and expenses as allowed by law, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ James R. Jarrow

James R. Jarrow MO#38686

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ATTORNEYS FOR PLAINTIFF

BAKER STERCHI COWDEN & RICE, L.L.C.